

REMARKS

The Examiner is thanked for the thorough examination and search of the subject.

Claims 55, 57, 58, 60-62 and 66-80 are pending; Claims 55, 57, 58, 69-71 and 75 have been currently amended; Claims 77-80 have been newly added; Claims 1-54, 56 59 and 63-65 have been canceled. No new matter is believed to have been added.

The Examiner considers that previously submitted Claims 55, 57, 58, 60-62 and 66-76 are directed to an invention that is independent or distinct from the invention originally claimed, and that since applicants have received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, Claims 55, 57, 58, 60-62 and 66-76 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. ~ *See the first and second paragraphs on page 2, in the last Office Action mailed Aug. 14, 2008 ~*

Applicants respectfully traverse the Examiner's opinions for the following reasons.

Applicants consider that previously submitted Claims 55, 57, 58, 60-62 and 66-76 are directed to an invention within the scope of the invention previously elected on May 29, 2002. Applicants elected the invention drawn to a device, classified in class 257,

subclass 738. The previously submitted Claims 55, 57, 58, 60-62 and 66-76 are believed to be directed to the invention drawn to a structure, classified in class 257, subclass 738.

Applicants assert that newly submitted or amended claims after an office action should be examined if newly submitted or amended claims are within the scope of the invention previously elected.

The rule of 37 CFR 1.145 is recited, as follow:

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**37 CFR 1.145 Subsequent presentation of claims for different invention.**

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144

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Previously submitted Claims 55, 57, 58, 60-62 and 66-76 are believed not to violate the rule of 37 CFR 1.145 because previously submitted Claims 55, 57, 58, 60-62 and 66-76 are directed to the invention previously claimed that is drawn to a device, classified in class 257, subclass 738.

The form paragraph 8.04 in M.P.E.P. 821.03 is recited, as follow:

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**¶ 8.04 Election by Original Presentation**

Newly submitted claim [1] directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: [2]

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim [3] withdrawn from consideration as being directed to a non-elected invention. See **37 CFR 1.142(b)** and **MPEP § 821.03**.

\*\*>A< complete action on all claims to the elected invention should be given.

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Under the form paragraph 8.04 in M.P.E.P. 821.03, previously submitted Claims 55, 57, 58, 60-62 and 66-76 are believed not to be withdrawn from consideration because previously submitted Claims 55, 57, 58, 60-62 and 66-76 are not directed to a non-elected invention, but to an elected invention, drawn to a device, classified in class 257, subclass 738.

Therefore, newly submitted or amended claims encompassing only some but not all subject matter from originally submitted claims are believed to be permitted for examination if the newly submitted or amended claims are directed to the invention previously elected.

As a result, examination for previously submitted Claims 55, 57, 58, 60-62 and 66-80 is respectfully requested.

Some or all of the pending claims are believed to be in condition for allowance. Accordingly, allowance of the claims and the application as a whole are respectfully requested.

It is requested that should Examiner Zarneke not find that the Claims are now Allowable that he call the undersigned at 845 452-5863 to overcome any problems preventing allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SBA', with a long horizontal flourish extending to the right.

Stephen B. Ackerman, Reg. No. 37,761